

MISC.CIVIL APPLICATION NOS.914 AND 200 OF 1993.

Date of decision: 21.11.1995.

For approval and signature

The Honourable Mr. Justice S.M. Soni

and

The Honourable Mr. Justice R.R. Jain

Miss Sadhna Sagar, advocate for applicants.

Mr. P.S.Champenari, A.G.P. for respondents.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M.Soni & R.R.Jain, JJ.

November 21, 1995.

Oral judgment (Per Soni, J.)

Both these applications are filed for non-compliance of the same order passed on 21.11.1991 in Special Civil Application No.6777/91. By the said order, this Court (Coram: C.K. Thakkar, J>) directed the authorities to decide the application in the light of the observations

made in the order with a further direction to decide the same expeditiously and preferably before December 31, 1991.

We are of the view that jurisdiction under Contempt of Courts Act should not be exercised in favour of the persons who have no regard for the truth. If the order is obtained by suppressing material facts, the party concerned will hesitate to enforce that order and when it is brought to the notice of this court that in fact and in substance the said order came to be passed on suppression of material facts which were within the exclusive knowledge of the petitioner, this court should refuse to exercise jurisdiction under the Contempt of Courts Act. So is the case in these applications.

In view of the affidavit in reply, it is clear that the following facts were suppressed by the petitioner and if the petitioner would have disclosed these facts, no court would have passed the order which is sought to be enforced by action under the Contempt of Courts Act.

"5. I say that the applicant for the first time made an application for compassionate appointment on 13.9.1983. At the relevant time the income limit fixed by the Government as per existing Government Resolution was Rs.600/- p.m. As per the provision contemplated in the said G.R., while calculating the family income, income from all the sources including family pension, and other monitory benefits and interest at the rate of 9% on the amount received by the heir to be taken into consideration. In the month of October and September 1993, a widow of the deceased employee received amount of Rs.385/- p.m. as family pension. After the death of the deceased employee, the following amounts were received by his family:-

1. Group LIC Scheme Rs.20,218/-
2. G.P.F. Rs. 4,532/-
3. Linked Insurance Rs. 3,182/-
4. Gratuity Rs.11,469/-

Rs.39,401/-
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On calculating 9% interest on the aforesaid amount of

Rs.39,401/- the total interest was Rs.295.50. Hence, the total of the family pension is Rs.385/- and the interest of Rs.2955/-, was Rs.680/-. That was the family income known to the Department at the relevant period of time based on information supplied by the applicant in his application. However, on making necessary inquiry it came to the knowledge of the Department that the widow of the deceased employee was also working as an Assistant Teacher. But intentionally the applicant has not mentioned this fact in his application. On the contrary, in his application it was mentioned that his mother was illiterate. Annexed hereto and marked as Annexure "I" is the copy of the said Application. The mother of applicant had drawn a salary of Rs.1253/- for the month of September 1983 as an Assistant Teacher. This fact was also concealed from this Honourable Court by the applicant in original SCA No.6777/91. Therefore, at the relevant time, total income of his family was Rs.1933/which was above the limit of Rs.600/- fixed by the Government at the relevant time. Had these facts been brought to this Honourable Court by the applicant, the Honourable Court might not have passed the aforesaid order in the said SCA. Therefore, I humbly submit that the applicant himself by misleading the Honourable Court obtained the aforesaid order and hence committed the contempt of the Court by misusing the process of the Honourable Court. Therefore, he is liable to be prosecuted to this by this Honourable Court.

6. I say that when the application of the applicant was sent to the Government by the DDO in May 1989, the income limit applicable was Rs.1,000/- At that time also, wife of the deceased employee was serving as an Assistant Teacher and she had drawn a salary of Rs.1824/- In addition to that she had also drawn Rs.652/- towards the family pension. Hence, at that time also total income of his family was Rs.2476/- which was above the limit fixed in the existing G.R. Annexed hereto and marked as Annexure "II" is the copy of the said G.R.

7. The widow of the deceased employee was retired on 31.12.1989. At present she is drawing a monthly pension of Rs.1851/-

In addition to that she is also getting Rs.652/- towards the deceased husband's family pension."

The above facts were within the personal knowledge of the petitioner. These facts could not be within the knowledge of the respondents and if these were within the knowledge of the respondents they ought to have disclosed the same when the order came to be passed in the main petition. For due administration of justice duty is cast on all the parties concerned to tell the truth before the court and disclose all the facts relevant to the case, if the same is within their knowledge. Principle of burden of proof also conveys that it is the duty of all the parties to bring the truth before the court if same is within their knowledge. In the instant case, the petitioner has suppressed relevant facts and it can be said that he has obtained favourable order by suppressing material facts. This court, in these facts and circumstances of the case, would not like to exercise its contempt jurisdiction

Another aspect of the matter on which the applications are liable to be dismissed is that this court while passing the order on 21.11.1991 has directed the authority to decide the application preferably on or before December 31, 1991. Both these applications are filed in the year 1993. Application No.200/93 is filed on 20.12.1993 and rule came to be issued on 21.3.1994. Misc.C.A.No.914/93 was filed on 18.1.1993 and rule came to be issued on 21.3.1994. In view of Section 20 of the Contempt of Courts Act, 1971,

the court has no jurisdiction to take cognizance beyond one year of the act or omission committing or constituting contempt of the court. In view of these facts, both these applications are filed beyond the stipulated time. Hence this court has no jurisdiction to take cognizance of the same.

In the result, for the reasons stated above, both these applications are liable to be dismissed and they are hereby dismissed. Rule in both applications is discharged. No order as to costs.